

## **SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 22-90**

### **PROCEDURAL HISTORY**

On July 21, 2022, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Community Complaint from the parent (Parent) of a student (Student) attending the **[REDACTED]** School District (District). The Parent alleged that the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, regarding the Student's education.

On July 22, 2022, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District superintendent on the same day. OSPI asked the District to respond to the allegations made in the complaint.

On August 8, 2022, OSPI received the District's response to the complaint and forwarded it to the Parent on August 10, 2022. OSPI invited the Parent to reply.

On August 15, 2022, OSPI received the Parent's reply. OSPI forwarded that reply to the District on August 17, 2022.

On September 8, 2022, OSPI requested additional information from the District and received that information on September 9, 2022. OSPI forwarded the information to the Parent on September 12, 2022.

OSPI considered all information provided by the Parent and the District as part of its investigation.

### **SCOPE OF INVESTIGATION**

This decision references events that occurred prior to the investigation period, which began on July 22, 2021. These references are included to add context to the issues under investigation and are not intended to identify additional issues or potential violations, which occurred prior to the investigation period.

### **ISSUES**

1. Did the District properly respond to the Parent's August 31, 2021 request for a reevaluation and/or functional behavioral assessment (FBA) and subsequently follow evaluation procedures, including conducting a sufficient and comprehensive reevaluation?
2. During the 2021–2022 school year, did the District develop an appropriate individualized education program (IEP) for the Student, including but not limited to consideration of the following:
  - a. Addressing concerns about lack of progress or regression, particularly in behavior and social skills;
  - b. Considering development of a behavioral intervention plan (BIP);
  - c. Developing appropriate goals for the Student;

- d. Considering the Student's least restrictive environment and placement given Parent requests to increase the Student's time in the general education setting;
  - e. Addressing requests for 1:1 support, including requests for training for the paraeducator; and,
  - f. Addressing requests for ABA or BCBA services?
3. Did the District follow extended school year (ESY) procedures following the Parent's January 5, 2022 request for ESY, including appropriately documenting decisions about ESY in a prior written notice?
  4. Did the District follow procedures to determine the Student's need for recovery services?

### **LEGAL STANDARDS**

Reevaluation Procedures: A school district must ensure that a reevaluation of each student eligible for special education is conducted when the school district determines that the educational or related service needs, including improved academic achievement and functional performance of the student warrant a reevaluation, or if the parent or teacher requests a reevaluation. A reevaluation must occur at least once every three years, unless the parent and school district agree that a reevaluation is unnecessary. 34 CFR §300.303; WAC 392-172A-03015. When a district determines that a student should be reevaluated, it must provide prior written notice to the student's parents that describe the evaluation procedures that the district intends to conduct. 34 CFR §300.304; WAC 392-172A-03020. The district must then obtain the parents' consent to conduct the reevaluation and complete the reevaluation within 35 school days after the date the district received consent, unless a different time period is agreed to by the parents and documented by the district. 34 CFR §300.303; WAC 392-172A-03015. The reevaluation determines whether the student continues to be eligible for special education and the content of the student's individualized education program (IEP). The reevaluation must be conducted in all areas of suspected disability and must be sufficiently comprehensive to identify all of the student's special education needs and any necessary related services. 34 CFR §300.304; WAC 392-172A-03020.

Functional Behavioral Assessment (FBA): An FBA focuses on identifying the function or purpose behind a child's behavior. Typically, the process involves looking closely at a wide range of child-specific factors (e.g., social, affective, environmental). Knowing why a child misbehaves is directly helpful to the IEP team in developing a behavioral intervention plan (BIP) that will reduce or eliminate the misbehavior. *Questions and Answers on Discipline Procedures* (OSERS June 2009) (Question E-2). The FBA process is frequently used to determine the nature and extent of the special education and related services that the child needs, including the need for a BIP, which includes behavioral intervention services and modifications that are designed to address and attempt to prevent future behavioral violations. *Letter to Janssen*, 51 IDELR 253 (OSERS 2008).

An FBA is generally understood to be an individualized evaluation of a child in accordance with 34 CFR §§300.301 through 300.311 to assist in determining whether the child is, or continues to be, a child with a disability. As with other evaluations, to conduct an FBA, the district must obtain the parents' consent and complete the FBA within thirty-five (35) school days after the district received consent. 34 CFR §300.303; WAC 392-172A-03015. *Questions and Answers on Discipline*

*Procedures* (OSERS June 2009) (Question E-4). Once the need for a reevaluation is identified, a district must act "without undue delay and within a reasonable period of time;" and the U.S. Department of Education, Office of Special Education Programs (OSEP) has indicated that waiting several months to seek consent is generally not reasonable. *Letter to Anonymous*, 50 IDELR 258 (OSEP 2008). The IDEA does not specify who is qualified to conduct an FBA, for example there is no requirement that a board-certified behavior analyst, or any other specific individual, conduct an FBA. *Letter to Janssen*, 51 IDELR 253 (OSERS 2008).

Behavioral Intervention Plan (BIP): A BIP is a plan incorporated into a student's IEP if determined necessary by the IEP team for the student to receive a free appropriate public education (FAPE). The BIP, at a minimum, describes: the pattern of behavior(s) that impedes the student's learning or the learning of others; the instructional and/or environmental conditions or circumstances that contribute to the pattern of behavior(s) being addressed by the IEP team; the positive behavioral interventions and supports to reduce the pattern of behavior(s) that impedes the student's learning or the learning of others and increases the desired prosocial behaviors and ensure the consistency of the implementation of the positive behavioral interventions across the student's school-sponsored instruction or activities; and the skills that will be taught and monitored as alternatives to challenging behavior(s) for a specific pattern of behavior of the student. WAC 392-172A-01031.

IEP Development: When developing each child's IEP, the IEP team must consider the strengths of the child, the concerns of the parents for enhancing the education of their child, the results of the initial or most recent evaluation of the child, and the academic, developmental, and functional needs of the child. 34 CFR §300.324(a). WAC 392-172A-03110.

IEP Revision: A student's IEP must be reviewed and revised periodically, but not less than annually, to address: any lack of expected progress toward annual goals or in the general education curriculum; the results of any reevaluations; information about the student provided to, or by, the parents; the student's anticipated needs; or any other matters. 34 CFR §300.324(b); WAC 392-172A-03110(3). Part of the information the IEP team considers when reviewing and revising a student's IEP is the result of the most recent evaluation. When the student's service providers or parents believe that the IEP is no longer appropriate, the team must meet to determine whether additional data and a reevaluation are needed. 34 CFR §300.303; WAC 392-172A-03015.

IEP Development for a Student with Behavioral Needs: In developing, reviewing and revising each student's IEP, the team must consider the use of positive behavioral interventions and supports and other strategies to address the student's behavior. 34 CFR §300.324(a)(2); WAC 392-172A-03110(2). This means that in most cases in which a student's behavior impedes his or her learning or that of others, and can be readily anticipated to be repetitive, proper development of the student's IEP will include positive behavioral interventions, strategies, and supports to address that behavior. Individuals with Disabilities Education Act (IDEA), 64 Fed. Reg. 12,475, 12,479 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 38). An FBA and BIP must be used proactively, if an IEP team determines that they would be appropriate for a child. *Questions and Answers on Discipline Procedures* (OSERS June 2009) (Question E-1 and E-2).

Measurable Annual Goals: IEPs must include a statement of the student's measurable annual goals, including academic and functional goals designed to: meet the student's needs that result from the student's disability so that he can be involved in and make progress in the general education curriculum; and, meet each of the student's other educational needs that result from the student's disability. 34 CFR §300.320(a)(2); WAC 392-172A-03090(1)(b).

Least Restrictive Environment: School districts shall ensure that the provision of services to each student eligible for special education, shall be provided: 1) To the maximum extent appropriate in the general education environment with students who are nondisabled; and 2) Special classes, separate schooling or other removal of students eligible for special education from the general educational environment occurs only if the nature or severity of the disability is such that education in general education classes with the use of supplementary aids and services cannot be achieved satisfactorily. 34 CFR §300.114; WAC 392-172A-02050.

A student's IEP team has the responsibility to determine the student's LRE and must consider the following factors when making the determination: the educational benefits to the student of a placement in a general education classroom; the nonacademic benefits of interaction with students who are not disabled; the effect of the student's presence on the teacher and other students in the classroom; and, the cost of mainstreaming the student in a general education classroom. *Sacramento City Unified School District, Board of Education v. Rachel Holland*, 14 F.3d 1398, 1400 (9<sup>th</sup> Cir. 1994).

Educational placement decisions must be determined annually, or sooner if appropriate, and be made by a group of persons, including the parents, and other persons knowledgeable about the student, the evaluation data, and the placement options that provide a reasonably high probability of assisting the student to attain his or her annual goals, and a consideration of any potential harmful effect on the student or on the quality of services the student needs, based on the student's IEP and LRE requirements. A student should not be removed from his or her age-appropriate general education classroom solely because of needed modifications in the general education curriculum. 34 CFR §300.116; WAC 392-172A-02060.

Extended School Year Services: Extended school year (ESY) services means services meeting state standards provided to a student eligible for special education that are beyond the normal school year, in accordance with the student's IEP, and at no cost to the parents of the student. School districts must ensure that ESY services are available when necessary to provide a FAPE to a student eligible for special education services. ESY services must be provided only if the student's IEP team determines, based on the student's needs, that they are necessary in order for the student to receive a FAPE. The purpose of ESY services is the maintenance of the student's learning skills or behavior, not the teaching of new skills or behaviors. School districts must develop criteria for determining the need for ESY services that include regression and recoupment time based on documented evidence, or on the determinations of the IEP team, based on their professional judgment and considering the nature and severity of the student's disability, rate of progress, and emerging skills, among other things, with evidence to support the need. For purposes of ESY, "regression" means significant loss of skills or behaviors if educational services are interrupted in

any area specified in the IEP. "Recoupment" means the recovery of skills or behaviors to a level demonstrated before interruption of services specified in the IEP. 34 CFR §300.106; WAC 392-172A-02020. A student's IEP team must decide whether the student requires ESY services and the amount of those services. In most cases, a multi-factored determination would be appropriate, but for some children, it may be appropriate to make the determination of whether the child is eligible for ESY services based only on one criterion or factor. *Letter to Given*, 39 IDELR 129 (OSEP 2003).

Recovery Services: Recovery services are intended to mitigate the impact of COVID-19 school facility closures in spring 2020 and COVID-19 pandemic generally. Recovery services should enable the student to make progress on IEP goals and be used if students have not been provided or were unable to access IEP services during the COVID-19 pandemic. While the need for recovery services may not be able to be fully measured while schools were operating in remote or hybrid models, districts were not prohibited from providing recovery services during the 2020-2021 school year. Recovery services should be determined by IEP teams on a case-by-case basis. Districts should examine the effect of COVID-19 and the special education and related services provided during school building closures and during the 2020-2021 school year on the student's overall progress and engagement, including progress toward their IEP goals. *Questions and Answers: Provision of Services to Students with Disabilities During COVID-19 in Fall 2020* (OSPI, August 26, 2020).

## FINDINGS OF FACT

### Background: Parent's Complaint

1. The Student is eligible for special education services under the category of autism and attended a District elementary school.
2. In her complaint, the Parent made several allegations, including:
  - The Student's triennial reevaluation was not comprehensive to the Student's changing needs: "socials skills – peer interactions...reading, writing, and math needs and regression, and...wasn't tested for writing skills."
  - The functional behavioral assessment (FBA) was delayed and the staff "refused to identify or acknowledge the need for an FBA" when the Student's behaviors began impacting him academically and socially. The Parent also raised concerns that the District was not addressing and supporting the Student's social skills needs. The Parent expressed concern that the FBA and behavioral intervention plan (BIP) took a full school year to complete.
  - Ignored recommendations for 1:1 paraeducator and delayed providing 1:1 support.
  - The Parent made several allegations regarding the development of the Student's individualized education program (IEP):
    - Regarding the Student's IEP goals, the Parent stated that goals the Student did not master were removed from the IEP instead of discussed by the team. The Parent also stated the goals were not complete, appropriate, measurable, or challenging/ambitious.
    - The Student "lost opportunity for...1:1 Direct [board certified behavior analyst] BCBA interaction" and that the District should have included this under related services.
    - The District should have listed resource room under supplementary services.

- The District failed to place the Student in his least restrictive environment, despite the Parent offered supports—“Private [applied behavior analysis] ABA team”—that could have supported the Student in the general education setting.
- The District failed to provide the Student extended school year (ESY) services.

### **Complaint Investigation Timeline began July 22, 2021**

3. On August 25 and 26, 2021, the Parent, the Student’s special education teacher/case manager (case manager), and the Student’s general education teacher emailed regarding whether the Student’s private ABA therapist could provide support in the classroom.

In one email, the case manager stated, “[Parent] if you would like [Student] to attend lunch and recess with [general education class], ABA will have to be at school supporting, during my classroom’s lunch and recess.”

According to the Parent’s complaint, the Student’s third grade general education teacher responded that the ABA support would be welcome, and that the Student would only be in his class during math time. The Parent responded and stated the Student’s IEP included more minutes in general education than just math. Subsequent emails from the general education teacher indicated he was not aware of the amount of time the Student would be spending in the general education setting.

4. On August 28, 2021, the Student’s case manager emailed the Parent, stating she was working on the schedule and stating that “if ABA wanted to support 1-2 full days, [Student] can increase time in [general education] during the times they are able to support. That would considerably help me, and then that would continue to help [Student] where I can support in the process of increasing time in [general education].”
5. On August 31, 2021, the Parent emailed the Student’s case manager and requested an IEP meeting and that they discuss a behavioral assessment and academic reevaluation. The case manager responded that she would set up an IEP meeting on the first day everyone was available.

### **2021–2022 School Year**

6. The District’s 2021–2022 school year began on September 1, 2021.
7. At the start of the 2021–2022 school year, the Student continued to be eligible for special education services, was in the third grade, and his February 2021 IEP was in effect.
8. The February 2021 IEP noted the Student’s behavior impacted his learning and listed strategies and supports that were used. The IEP included goals in writing, reading, fine motor/handwriting, behavior, and speech. The IEP included several accommodations and the specially designed instruction and related services to address his goal areas, provided in a special education setting. The IEP indicated the Student would spend 34.8% of his time in the general education setting.

9. On September 8, 2021, the Student's IEP team met at the Parent's request. According to the District's response and prior written notice, the Parent requested: the Student's reevaluation be initiated early; the Student's minutes in general education be increased; that an FBA be conducted; that data on the Student's movement from the "independent learning center" (ILC) to general education be collected; and that the Student's private ABA therapist be involved in the Student's IEP process.

The prior written notice indicated the District agreed to initiate a reevaluation; agreed to increase the general education minutes and that the Student's schedule was being adjusted to support the Student attending general education for more than two hours per day; agreed to collect behavioral data and then discuss at the next meeting whether an FBA would be useful; noted that the Student's behavior in the ILC room was good, but that generalizing skills was more challenging so the team agreed to collect data to review at the next meeting and send home a copy of the Student's behavior sheet; and noted that the private ABA provider and Parents "inquired about a 1:1 through the district, as ABA is not to help provide academic services or supports while in the school setting" and the team agreed to collect behavioral data and then discuss the request for a 1:1 at a follow up meeting. The notice also indicated that as part of the reevaluation, the team would look at changing the Student's eligibility category to autism.

10. Also, on September 8, 2021, the case manager emailed the Parent the prior written notice from the September 8, 2021 IEP meeting and requested the Parent's feedback. The Parent emailed on September 10, 2021, that the "only thing I wanted to add was changing his disability from health impaired to Autism Spectrum Disorder." The case manager replied that this would be done as part of the reevaluation.
11. On September 9, 2021, according to the Parent's complaint, the special education teacher and a paraeducator began collecting data.
12. On September 12, 2021, the Parent signed consent for the Student's re-evaluation. The consent form indicated the reevaluation would address: a review of existing data, general education, speech and language communication skills, fine motor skills, health and developmental history, cognitive processing abilities, academic skills, and social/emotional.
13. On September 21, 2021, the Parent emailed the case manager and principal and requested they stop data collection because the Student had begun self-harming.
14. On September 30, 2021, the Student's IEP team met.

According to the District's response and prior written notice, the purpose of this meeting was to review the data collected over the first few weeks of school, "with the Student in the general education setting with support from the Independent Learning Center (ILC) team," which included a special education teacher and paraeducator. The data collection indicated the Student required prompting through the day and documented targeted behavior. The IEP team discussed the data collection, identified that the Student required support in all school

settings, and noted that "behavior charts and penny boards were used in the gen ed and special education settings to help the Student regulate and stay in the general education setting." The District stated that based on the data collected, an FBA would be necessary.

The prior written notice indicated that the Parents wanted to discuss a 1:1 for the Student, but that "the rest of the team asked for that conversation of placement and supports needed to be held after the FBA was conducted."

15. According to the Parent's complaint, at the September 30, 2021 IEP meeting, the special education teacher stated the Student needed constant supervision for his safety and that the District stated that 1:1 support was too restrictive. The Parent stated the District then said they could discuss the 1:1 support later, as they were granting the Parent's request for an FBA.

The Parent stated that at this point, she was concerned about the Student's self-harming, eloping, and his escalated behaviors. The Parent stated she subsequently consulted with the Student's doctor who stated that "medically necessary ABA in school is deemed necessary again." The Parent stated that she spoke with the principal and special education teacher about "reinstating private ABA support in school as it is deemed medically necessary" and that "it was welcomed by both and asked how soon it could start."

16. The District noted the Parents requested a private provider conducted the FBA, which the District rejected, stating it has the resources and staff to complete an FBA and proposed moving forward with an FBA lead by an Educational Service District (ESD) BCBA. The District stated the FBA was completed with the reevaluation, which was already in progress.
17. On October 4, 2021, the District's BCBA emailed the Parents a consent form for the FBA. The Parent emailed and responded she consented to the FBA.
18. On October 6, 2021, the Parent emailed the District regarding the Student's private ABA support, primarily that there were limits imposed by the Parent's insurance "as to what Medically Necessary ABA services in school should look like." Given the limits, for example the BCBA could not function as a 1:1 paraeducator and was only there to support the Student's behavior plan, the Parent requested a 1:1 paraeducator, an FBA, and a BIP.
19. On October 11, 2021, the District assistant director of student support services (assistant director) emailed the Parent, principal, and case manager and stated, "at this time we are in the process of completing a District re-evaluation and FBA" and that "before moving forward with any other plan, the team will need to complete these assessments." The assistant director stated that based on the results of the reevaluation and FBA, the Student's IEP team would decide whether the Student needed a BCBA, behavior technician, and 1:1, and then the District would provide those through their staff or contracted providers. The assistant director did state that they were happy to coordinate services with the Student's private providers.
20. The District's response also included a consent for the reevaluation, signed by the Parent on October 13, 2021.



21. On October 25, 2021<sup>1</sup>, the Student's team met to review and discuss the results of the reevaluation. The reevaluation report indicated the Student continued to be eligible for special education services and changed the Student's eligibility category to autism, noting the Student had diagnoses of autism, attention deficit hyperactivity disorder (ADHD), generalized anxiety disorder, and developmental coordination disorder. The evaluation report included recommendations that the Student receive specially designed instruction in adaptive/life skills, behavior, reading, writing, and math, and related services in speech.

The evaluation report indicated the group reviewed and administered the following:

- Health and developmental history and diagnoses
- The "Developmental Profile 4 (DP-4)", which includes adaptive behavior, social-emotional, cognitive, physical, and communication scales
- The "Wechsler Intelligence Scale for Children – Fifth Edition (WISC – V)
- The "Goldman-Fristoe Test of Articulation – Third Edition (GFTA-3)" and the "Clinical Evaluation of Language Fundamentals – Fifth Edition (CELF-5)"
- The "Bruininks-Oseretsky Test of Motor Proficiency, Second Edition (BOT-2)"
- The "Behavior Assessment System for Children – Third Edition (BASC-3)"

Significant findings from the evaluation indicated the Student's cognitive abilities were in the average range, but that the Student had clinically significant processing deficits related to short-term auditory memory and concentration, and exhibited delays in several areas of development. In communication, the Student's articulation skills were in the below average range. The evaluation indicated the Student's academic scores were clinically significant and that the Student required specially designed instruction in all areas of academics. In the areas of fine motor, the evaluation indicated the Student had demonstrated significant progress and mastered his fine motor goals, the reevaluation did not recommend continuing occupational therapy services. In adaptive behavior and social-emotional, the Student was rated as being at risk in several areas.

The evaluation also noted, under the academic section, that the Student "did not respond sufficiently in some areas thus those areas could not be scored...[including] tasks that involved reading comprehension tasks and written language tasks."

22. Regarding the reevaluation, the Parent in her reply to the District's response, explained that she was concerned that the District was "unable" to test for writing and did not test reading comprehension. The Parent also stated that the reevaluation should have triggered further assessment of or discussion about: "peer interactions/friendships;" "determining what behaviors or symptoms of his disabilities are preventing him from making academic progress at the rate is capable of; and "regression and lack of progress," which should have led the team to discuss compensatory education, recovery services, and ESY.

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<sup>1</sup> November 1, 2021 was 35 school days from when the Parent signed consent for the reevaluation on September 12, 2021.

23. On November 16, 2021, the District completed an "assessment revision" to "be more descriptive and clarify needs between behavior and social emotional and further define [specially designed instruction] areas." The assessment revision separated behavior and social-emotional into two separate areas of specially designed instruction.
24. On November 18, 2021, the Student's IEP team met, reviewed the results of the FBA, developed the Student's annual IEP, and developed a BIP.<sup>2</sup>

According to the prior written notice, the team discussed the Student's "current schedule, behavior, 1:1 Hiring process, and BIP" and the Parents requested the team discuss the "resource room and BCBA minutes added to related services." The notice indicated the team previously discussed the Student's FBA and were moving forward with developing and implementing a BIP. The notice further stated:

As discussion of the BIP was completed, conversation included [Student's] current schedule where parents have requested another increase with Resource services, to add BCBA minutes as 1 hour of direct minutes a day (instead of the 3 hours of direct and indirect services written in the current IEP) and add it under Related services, and would like behavior minutes removed or changed.

The team has asked that we discuss potentially changing or amending the IEP after the current plan (IEP and BIP) has had some time to be implemented in the school setting. A February 2022 meeting has been set up to discuss the parental requests in better detail.

...

The...FBA was conducted with the team agreeing that a...BIP be put into place. The new paraprofessional that has been hired to work as a 1:1 with [Student] has now had 5 days working in the school setting.

A second prior written notice addressed the review and discussion of the FBA, and documented the agreement to have four target behaviors listed in the FBA but only three of the target behaviors addressed by a BIP. The FBA indicated that the Student's challenging behaviors were primarily related to escape or delay, access to a tangible or activity, and a few times seeking attention. Target behaviors included taking school/class or others' property; not focusing or engaging in planned activities, leaving or refusing to enter the classroom, leaving the instructional setting, and hiding under desks; self-harming behaviors (pulling hair, putting fingers down throat, or other behaviors that cause self-inflicted tissue damage); and whining, swearing, yelling, and other statements attempting to remove or delay tasks.

The prior written notice also indicated that the BIP would be further discussed and developed at the next meeting as it "took the team 3 1/2 hours for this FBA and IEP." The team planned to meet again in January to "discuss where we are in the process of hiring a 1:1...and any other

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<sup>2</sup> OSPI notes that there were three prior written notices dated November 18, 2021, and that some of the language indicates that certain topics, like the BIP, were actually discussed or discussed further at a later date. The District clarified that the BIP was developed at the November 18, 2021 meeting, but that the team decided to gather more data and finalized the BIP at a January 18, 2022 IEP meeting.

pertinent information in starting next steps in transitioning from ILC SPED to Resource Room sped, and to go over the completed BIP.”

A third prior written notice indicated the Student’s IEP goals were also discussed, and the IEP updated based on the recent reevaluation. The notice indicated the Student would start accessing some services in the resource room daily for writing and that time with general education peers would increase gradually. The team agreed to a gradual increase, with the Parents disagreeing and wanted a faster track.

25. The November 18, 2021 IEP listed the Student’s strengths, the Parents’ concerns (placement, FBA/BIP, 1:1 support, and BCBA support), and indicated the Student’s behavior impacted his learning, listing several behavior strategies being used. The IEP indicated that a BIP would be developed and put in place and that a “1:1 should be written into the IEP as [Student] needs constant support for the safety of himself.” The IEP included present levels of performance, updated based on the recent reevaluation and teacher observations, including observations related to the Student’s time in general education and behavior as follows:

The current school year (2021/22) parent requested an increase of minutes in Gen Ed, ASAP with documentation of behavior and results of the modified schedule (which stated soon after school began). Results from the trial of being in General Education (with support at all times), showed [Student] unsuccessful on many days. Parents sent an email requesting a stop of documentation as [Student] started self harming at home and at school. With [Student’s] current schedule of attending Gen Ed for recess, lunch, PE, Music, Media, Library, counseling, Math instruction, and any specials such as art in Gen Ed, [Student’s behavior is much more manageable. He seems to be happy with the current schedule as he does not express his desire to leave Gen Ed and return to the other classroom...when in the middle of a math lesson.

The IEP noted the Student would continue to receive math instruction in the general education classroom and additionally in the ILC classroom, and that the team agreed the Student would get support from resource room staff to “try and transition [Student] from the current placement of the ILC classroom, to increase Gen Ed time with support from Resource.”

The IEP included goals, many with objectives, in reading (words per minute, reading new words, reading comprehensions), writing (three sentence paragraph), math (multiplication), adaptive/life skills (bathroom interactions with others), social/emotional (use a break card, calm body<sup>3</sup>, remaining on task/in the correct setting, minimizing verbal protests, and cooperative work<sup>4</sup>), and speech (/r/ and “th” at word level), with progress reporting at the trimester.

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<sup>3</sup> The Student’s “calm body” goal referenced the Student having a calm body and gave examples, including “body is relaxed (not showing distress such as sitting or rocking and not running around room)...” The Parent stated in her reply to the District’s response that this goal inappropriately targets rocking, which is a stimming behavior and helps the Student calm down. The Parent further stated it is a symptom of autism.

<sup>4</sup> The Parent also stated in her reply that she wanted a goal about peer interactions and making/keeping friends. The Student’s cooperative work goal did target the skill of working cooperatively with a peer.

The IEP included several accommodations and modifications, including a “behaviorally related 1:1 para” and included “ESD BCBA consultations” for three hours per week as a support for school personnel. The IEP provided the following specially designed instruction, related services, and supplementary aids and services (SAS)—all to be provided in the special education setting:

- Behavior: 38 minutes, 5 times weekly (provided by special staff, monitored by a special education teacher)
- Reading Skills: 34 minutes, 5 times weekly (provided by special staff, monitored by a special education teacher)
- Writing: 34 minutes, 5 times weekly (provided by special staff, monitored by a special education teacher)
- Social Skills: 28 minutes, 5 times weekly (provided by special staff, monitored by a special education teacher)
- Math Skills: 24 minutes, 5 times weekly (provided by special staff, monitored by a special education teacher)
- Adaptive/Life Skills: 27 minutes, 5 times weekly (provided by special staff, monitored by a special education teacher)
- Writing: 30 minutes, 1 time daily (provided by special staff, monitored by a special education teacher)
- Speech Support Services (related): 20 minutes weekly (provided by an SLP/SLPA)
- Classroom Aide (SAS): 1,775 minutes weekly (provided by an instructional assistant, monitored by a special education teacher)

The IEP indicated the Student would spend 38.31% of his time in the general education setting. The IEP indicated the Student was not eligible for ESY services.

26. The BIP, dated November 18, 2021, included the target behaviors of not focusing or engaging in planned activities, leaving or refusing to enter the classroom, leaving the instructional setting, and hiding under desks; self-harming behaviors (pulling hair, putting fingers down throat, or other behaviors that cause self-inflicted tissue damage); and, whining, swearing, yelling, and other statements attempting to remove or delay tasks.

27. In her reply to the District’s response, the Parent expressed concern that the BIP did not address peer interactions and building healthy peer relationships.

28. As summarized in the District’s response, at the November 18, 2021 IEP meeting:

Discussion started with a reflection of data collected at the beginning of the year with [Student] participating in general education with support (1:1 paraprofessional) and a review of performance academically and behaviorally. The District rejected the move from the...ILC or special education location where [Student] was receiving [least restrictive environment] of 34.87% in his previous IEP, proposing that the change of placement should be gradual and based on the data and recent FBA. The 11/18/21 IEP increased the LRE to 38.31% in general education...This is a LRE 3 setting (0-39% in regular class). LRE setting 1 (80-100% regular class) and 2 (40-79% regular class) were considered and rejected due to the following: academic benefit cannot be satisfactorily achieved, non-academic benefit cannot be satisfactorily achieved, and effect student will have on teacher and other students based on the recent evaluation and FBA. In addition, the District developed a BIP

and agreed to add a 1:1 paraprofessional to support the transition to increase more time in the general education setting.

29. On December 6, 2021, the Parent emailed the District staff and asked whether they were still in the process of hiring a 1:1 paraeducator for the Student, requested the paraeducator be provided additional training, and requested the Student be provided direct intervention services from a BCBA.
30. On December 8, 2021, the Parent emailed the District and asked why private ABA services could not be utilized as they would be billed to the Parent's insurance.
31. On December 10, 2021, the District sent the Parent the IEP. In her complaint, the Parent noted she had the following concerns about the draft IEP:
  - The Parent stated she requested direct BCBA service minutes with the Student to implement the BIP and train staff across all settings in the school to better assist the Student behaviorally, academically, and socially. And that, "BCBA minutes are listed under Supports for School Personnel - Consultation Only" and this her request for the BCBA was "refused because [Student] would not be receiving Direct Minutes" and/or "Parents request BCBA under Related Services & [resource room] under Supplementary Services. Request Denied."
  - The Parent requested the BCBA oversee "the implementation and transition [so] he would be positively & properly supported and maladaptive behaviors would be addressed before escalation to self-harming." The Parent stated this was denied.
  - "Gen Ed setting is 38.31%"
  - Concerned why writing is listed twice when writing is the Student's least favorite subject and behaviors "are notably what is impeding his success in school." The Parent asked why one of the writing minutes could not be changed to behavior and be addressed in the general education setting with direct support from the BCBA. The Parent stated this was denied.
  - The Parent stated she requested 1:1 support, which she stated was initially denied.
  - The Parent stated her request to increase the Student's time in the general education setting was denied as "BIP is just being implemented and we need to see how that goes before making any other changes." The Parent stated the Student spent 49.2% of his time in the general education setting with BCBA support.
32. The District was on winter break from December 20–31, 2022.
33. On January 5, 2022, the Parent emailed the District, asking in part about whether the Student's private ABA could be provided in school and whether a 1:1 paraeducator had been hired? The Parent also listed several accommodations and supports she planned to ask the IEP team to discuss, including a laptop to use at home, academic books/workbooks to use at home, direct BCBA services listed under related services, and extended school year (ESY) services. The Parent also stated she wanted the Student to participate in the general education setting more.
34. On January 13, 2022, according to the Parent's complaint and reply to the District's response, the District hired a 1:1 paraeducator to support the Student.

35. The District clarified that the 1:1 paraeducator was added to the Student's IEP during the November 18, 2021 IEP meeting and that following this, the District posted and hired a 1:1. However, the District stated the Student had been provided 1:1 support since the start of the school year while the team was gathering data and that the support was provided by existing special education staff in the building.
36. On January 18, 2022, the Student's IEP team met. The District clarified that the team finalized the BIP at this meeting and that the meeting was essentially a continuation of the November 18, 2021 meeting.
37. The Parent, in her complaint, stated that at the January 2022 meeting, the team discussed increasing the Student's time in resource room. The Parent stated they discussed how the Student was doing in the resource room and since implementing the BIP, and that the Student was responding positively to both.
38. On February 16, 2022, as document in the prior written notice, the Student's IEP team met and discussed the Student's data with his increased amount of time in the general education setting and new supports (1:1 paraeducator). The team also discussed increasing the Student's time in the resource room from writing services to reading and writing, noting that "after break the Resource Teacher will pull [Student] to assess reading levels and to put him in a small group." The team discussed having the Student attend full days to support the transition from ILC to resource.

The prior written notice indicated that "with the increase of time in Gen Ed since November 2021 [Student's] minutes have increased from 38.3% to 61.4%" and that a "matrix of current minutes (with ILC support) was provided to the team (61.4%) as well as a matrix of what minutes could potentially look like if in Resource which was 73.5% were discussed."

The prior written notice further stated:

The team discussed having the Resource Teacher either push in or pull out for math services (after reading services have been established) which will be the last transition before changing case managers from ILC to Resource, with the expectance by the end of the year [sic]...It was not rejected moving forward with increasing services with the Resource Room teacher as data is showing the BIP and current service are positively working. And amendment was considered, but rejected as we are in the process of the transitional period with minutes continually changing. (The amendment will be completed by the end of the school year showing minutes with Resource support and the new case manager.)

...

The team discussed summer school and recovery services, with parents interested in what is available to then make a choice if they want to participate. [Parent] requested that if [Student] gets a new 1:1 para that the district pay for 40 hours of behavioral training and that it is written in the IEP. [Principal] discussed 'necessity' versus 'want' and declined the request.<sup>5]</sup>

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<sup>5</sup> The District stated in its response that paraeducators receive the training aligned with WA state competencies. And, in addition, the Student's paraeducator was trained in Right Response and provided

39. In her reply to the District's response, the Parent further stated that in the month following the implementation of the BIP and 1:1 paraeducator support, the Student had a 50% reduction in targeted behaviors.

40. In her complaint, the Parent expressed the following concerns:

- It took six IEP meetings before the team agreed to increase the Student's time in general education to 73.5%.
- Concern that they requested the future 1:1 paraeducator have behavioral training as the Student's current 1:1 paraeducator has "an RBT/behavior training and Autism experience," and this was denied.
- The Parents expressed concern that the Student was regressing behaviorally as his BIP was focusing on behaviors that had been targeted in the Student's private ABA therapy in 2018 and 2019.

41. On March 10, 2022, the Parent emailed the general education teacher, case manager, and other District staff and expressed concern that the Student was "behind in core subjects" and stated she was "looking for suggestions on skills to focus on over the summer months to try and close the gap." The case manager and principal responded, respectively, with information about the grade level standards and that summer school offerings would be announced soon. The general education teacher also responded that he recommended the Student focus on social emotional skills, task completion, and showing his work on math problems.

42. On March 14, 2022, the Parent called the 2021–2022 director of student support services (director) and asked if they could discuss compensatory education to address the Student's regression, repetitive or incomplete IEP goals, and testing results from first and third grade. The director stated the IEP team could discuss.

43. Also, on March 14, 2022, the Parent emailed the principal and the school psychologist and requested to meet with them rather than the entire IEP team to discuss compensatory education and recovery services.

The principal responded that he had spoken with the director, and that the director stated the District staff needed to discuss what offerings were available and then they would reach out to the Parent.

44. On March 17, 2022, the principal emailed the Parent and stated that the District staff had discussed recovery services, but that the District needed more information. The principal stated he would reach out when he knew more.

45. On March 21 and again on May 12, 2022, the Parent submitted what she was requesting for compensatory and recovery services, including:

- "1:1 High Quality Tutor."

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training from the special education team related to the Student's IEP and BIP. This included training from the District BCBA. The District also noted that "the paraprofessional that was hired previously was trained as a Registered Behavior Technician (RBT)."

- "Contract with a BCBA...over the Summer to maintain [Student's] BIP during ESY and anytime one is not available or provided by District i.e., 1st day of school."
- "School Paid for social skills opportunities with BCBA and or BT/ Behavior trained 1:1 Para i.e. After School Program."
- "BCBA direct service minutes."
- "Behavior training...for any 1:1 Para-professional, who assists [Student]."
- "Providing weekly BIP data to parents."
- "Responding to reasonable requests in 10 business days."

46. In late April 2022, the Parents signed the Student up to participate in an after-school program as a social opportunity. In an email about the program, the Parent asked the case manager to fill out a survey for the Student's private ABA provider. The case manager responded and stated she recommended the Student focus on the following skills: expected behavior throughout settings, "nice voice", and interacting with students.

47. On May 12, 2022, the Parent emailed the principal, director, and school psychologist and asked whether any decisions had been made about compensatory education services and requested this be documented in a prior written notice.

48. Also, on May 12, 2022, according to the Parent's complaint, the principal asked her if the Student was signed up for the District's summer school as the deadline was the 13th. The Parent stated no because she was still waiting on a response regarding compensatory education.

49. On May 16, 2022, the Student's IEP team met. According to the District's response, the meeting was to "finalize the transition from the ILC special education model to the resource room special education model." The Student's IEP was amended to reflect the increased time spent in the general education setting. The District stated, and the IEP reflected, that the goals were not changed, but updated to include the academic standard they were connected to.

The IEP included numerous accommodations and modifications, including a 1:1 paraeducator, and three hours a week of ESD BCBA consultation as a support for school personnel. The IEP included the following specially designed instruction, related services, and supplementary aids and services (SAS):

- Behavior (concurrent): 15 minutes, 5 times weekly (provided by special staff, monitored by a special education teacher in the special education setting)
- Reading Skills: 150 minutes weekly (provided by special staff, monitored by a special education teacher in the special education setting)
- Math Skills: 150 minutes weekly (provided by special staff, monitored by a special education teacher in the special education setting)
- Adaptive/Life Skills: 10 minutes, 5 times weekly (provided by special staff, monitored by a special education teacher in the special education setting)
- Social Skills: 30 minutes, 5 times weekly (provided by special staff, monitored by a special education teacher in the general education setting)
- Writing: 150 minutes weekly (provided by special staff, monitored by a special education teacher in the special education setting)



- Behavior: 30 minutes, 5 times weekly (provided by special staff, monitored by a special education teacher in the general education setting)
- Speech Support Services (related): 20 minutes weekly (provided by an SLP or SLPA in the special education setting)
- Classroom Aide (SAS): 1,775 minutes weekly (provided by an instructional assistant, monitored by a special education teacher in the general education setting)

The IEP indicated the Student would spend 69.01% of his time in the general education setting.

The District response summarized the prior written notice, noting that:

The team decided to make the transition from the ILC case manager to the resource case manager in the fall. At this meeting, each area of [specially designed instruction] was explained and the service minutes connected to each of them. Pull out minutes were set as 150 per week to allow for flexibility with scheduling. In class minutes will be provided by the 1:1 para. Concurrent minutes on behavior will happen while the Student is in the resource room working on academic skills...The data collected on the BIP was shared and all of the data shows improvements...Parents were reminded that the service time in the IEP can be adjusted. It was a proposal to see how the service proposed time works for [Student] for the remainder of 3rd and into 4th grade. The Student will be due for an annual review in the fall. His outside BCBA participated in this meeting via Zoom.

50. On May 25, 2022, the principal emailed the Parent that he met with the director and assistant director and proposed summer school as part of the recovery services for the Student.

The Parent responded on May 26, 2022, that her understanding was that compensatory education was supposed to be individualized to the Student's needs and asked how the summer program, "being offered to anyone interested" would address the Student's specific needs. The Parent also asked whether "ESY for [Student], will this include a 1:1 para and BCBA weekly oversight? Will his BIP continue to be implemented with data collection?"

51. The Parent stated in her complaint that in the May 16, 2022 email, she "expressed [her] concern for Summer School as being offered to anyone grades 1-5 wanting to attend not being individual to [Student's] needs like Comp Ed with ESY would be." The Parent stated she received no response.

52. On June 6, 2022, the Parent requested a prior written notice, documenting her request for compensatory and recovery services.

The director responded and proposed dates the IEP team could meet to discuss the Parent's request.

53. On June 17, 2022, the Student's IEP team met at the request of the Parent.

The District summarized the prior written notice in its response, stating that at the meeting, the school team proposed the Student attend the District's summer school program for recovery services in behavior and writing. The IEP team determined the Student did not require ESY, but that ESY for the following year would "be discussed and considered at the fall IEP

review meeting based upon data collected with the summer recovery services as compared to previous summer and fall data." The District noted the District BCBA would attend the summer school/recovery services as the Student's 1:1 to ensure the BIP and goals were implemented.

54. On June 25, 2022, the Parent emailed the director, assistant director, principal, and other staff, regarding the June 17, 2022 prior written notice. The Parent stated there were elements of the prior written notice she did not recall discussing at the meeting, including:
- ESY: Parent stated, "I did not ask about ESY at that meeting and we did not discuss tabling the ESY discussion until Fall."
  - The Parent stated she thought the meeting was about compensatory education and ESY, and came prepared to have a discussion about document regression. The Parent stated instead they discussed recovery services in the form of summer school.
55. The Parent reiterated in her reply to the District's response that the IEP team did not discuss ESY at this meeting and asked, "wouldn't I have received a [prior written notice] stating why he didn't qualify this this had occurred?"

### **Summer 2022**

56. The District noted that the Student attended recovery services during summer school 2022 to support progress toward writing and behavior goals in the IEP and BIP. The BCBA acted as the Student's 1:1 during summer services and monitored the implementation of the Student's IEP and BIP.
57. In her reply to the District's response, the Parent stated that during summer school with 1:1 support from the BCBA, the Student had "100% behavior free days with only 1 emotional day the entire time & was working toward making friends."

### **CONCLUSIONS**

**Issue One: Reevaluation & Functional Behavioral Assessment (FBA)** – The Parent alleged that the Student's reevaluation did not comprehensively address the Student's needs and that the District delayed conducting an FBA.

FBA Timeline: The Parent generally alleged that the District improperly delayed conducting an FBA given previous recommendations to conduct an FBA. An FBA focuses on identifying the function or purpose behind a child's behavior and is generally understood to be an individualized evaluation of a student. As with other evaluations, to conduct an FBA, the district must obtain the parents' consent and complete the FBA within 35 school days after the district received consent. Once the need for a reevaluation is identified, a district must act "without undue delay and within a reasonable period of time;" and the U.S. Department of Education, Office of Special Education Programs (OSEP) has indicated that waiting several months to seek consent is generally not reasonable.

On August 31, 2021, the Parent requested, via email, that the Student be reevaluated and that a behavior assessment be conducted. The Student's IEP team met on September 8, 2021 and

discussed the Parent's requests. The team agreed to initiate a reevaluation and, given that they had agreed to increase the Student's minutes in general education, agreed to collect behavioral data and then discuss at the next IEP meeting whether an FBA would be useful. On September 30, 2021, the Student's IEP team met again and determined, based on data collected, that an FBA was necessary. On November 18, 2021, the Student's team met to discuss the FBA—within 35 school days of the Parent signing consent on October 13, 2021.

While the Student's IEP team did not agree immediately following the Parent's request to initiate an FBA, the District did not unreasonably delay the FBA. OSEP has indicated that waiting several months to seek consent for an FBA is unreasonable; however, here, the team agreed less than a month after the first meeting discussing an FBA and consent was obtained shortly thereafter. Given that it was the start of the school year and that the team agreed to try increasing the Student's minutes in general education, it was reasonable to collect some baseline data to see if an FBA was needed. OSPI finds that the District's plan was reasonable and followed required timelines, OSPI finds no violation.

Comprehensive Evaluation: A school district must ensure that a reevaluation of each student eligible for special education is conducted when the school district determines that the educational or related service needs warrant a reevaluation, or if the parent requests a reevaluation. The reevaluation determines whether the student continues to be eligible for special education and the content of the student's individualized education program (IEP). The reevaluation must be conducted in all areas of suspected disability and must be sufficiently comprehensive to identify the student's special education needs.

As discussed above, the District agreed to conduct a reevaluation of the Student following the Parent's request and IEP meeting to discuss the same. The Parent signed consent for the reevaluation on September 12, 2021, and the consent form indicated the reevaluation would address: a review of existing data, general education, speech and language communication skills, fine motor skills, health and developmental history, cognitive processing abilities, academic skills, and social/emotional. On October 25, 2021, within 35 school days of the Parent signing consent, the Student's team met to review and discuss the results of the Student's reevaluation.<sup>6</sup> The reevaluation changed the Student's eligibility category to autism and recommended the Student receive specially designed instruction in adaptive/life skills, behavior, reading, writing, and math, and related services in speech. The evaluation reviewed health and developmental history, and the District conducted multiple new assessments that looked at adaptive, social-emotional, cognitive, communication, behavior, and motor skills.

In relation to the Parent's specific concerns, the evaluation did assess the Student's reading and writing skills, although the evaluation report indicated that the Student did not respond sufficiently in some areas such that those areas could not be scored, including reading comprehension tasks and written language tasks. Regardless, the evaluation found the Student

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<sup>6</sup> The District also completed an "assessment revision" on November 16, 2021, which further described and clarified the Student's behavior and social emotional needs, separating these two areas into two separate areas recommended for specially designed instruction.

continued to need specially designed instruction in all academic areas, and thus the Student not completing some of the tasks on one assessment did not render the evaluation insufficient or impact his receipt of services in those areas. Additionally, the Parent stated that the reevaluation should have triggered further assessment of or discussion about: "peer interactions/friendships;" "determining what behaviors or symptoms of his disabilities are preventing him from making academic progress at the rate is capable of"; and "regression and lack of progress," which should have led the team to discuss compensatory education, recovery services, and ESY. The District's reevaluation and co-occurring FBA addressed some of these concerns; for example, the reevaluation addressed social emotional and behavior, and the FBA addressed the Student's behavior. While these topics may not have been addressed at the reevaluation meeting on October 25, 2021, many of the topics were addressed at future IEP meetings as discussed below.

Overall, OSPI finds the District's reevaluation addressed all areas of suspected need, utilized multiple different assessments and sources of information, and that the reevaluation was sufficient. While the reevaluation did prompt a need to consider certain areas further, this does not render the evaluation itself insufficient. OSPI finds no violation.

**Issue Two: IEP Development** – The Parent made several allegations with respect to the development of the Student's IEP during the 2021–2022 school year, as detailed below. In general, when developing a student's IEP, the team must consider the strengths of the student, the concerns of the parents for enhancing the education of their student, the results of the initial or most recent evaluation of the student, and the academic, developmental, and functional needs of the student. During the 2021–2022 school year, the Student's IEP was developed on November 18, 2021 and amended on May 16, 2022.

Appropriate Goals: Regarding the Student's IEP goals, the Parent expressed concern that the goals the Student did not master were removed from the IEP instead of discussed by the team. The Parent also stated the goals were not complete, appropriate, measurable, or ambitious. IEPs must include a statement of the student's measurable annual goals, including academic and functional goals designed to: meet the student's needs that result from the student's disability so that he can be involved in and make progress in the general education curriculum; and meet each of the student's other educational needs that result from the student's disability.

During the time period investigated, the 2021–2022 school year, the Student's annual IEP was developed and the goals updated on November 18, 2021.<sup>7</sup> The Student's IEP included goals, with objectives, in reading (words per minute, reading new words, reading comprehensions), writing (three sentence paragraph), math (multiplication), adaptive/life skills (bathroom interactions with others), social/emotional (use a break card, calm body, remaining on task/in the correct setting, minimizing verbal protests, and cooperative work), and speech (/r/ and "th" at word level). The documentation indicates the IEP team developed the goals based on the reevaluation, which informed the Student's present levels and thus the substance of the goals. The goals in the IEP

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<sup>7</sup> The Student's IEP was also amended in May 2022; the substance of the goals was not changed, although the associated grade level standard was added. Thus, the relevant IEP for investigation is the November 2021 IEP.

targeted the Student's needs, based on the present levels, and the goals appeared to be reasonably challenging. For example, the Student was in third grade, but the reading goals included that the reading passage would be "a leveled passage (i.e., 4<sup>th</sup> grade)." The Parent attended and participated in the IEP meeting, and thus had the opportunity to participate in the development of the goals and to voice concerns or suggestions regarding the goals.

In her complaint and reply to the District's response, the Parent expressed specific concerns regarding the goals; however, it is not clear whether she expressed these concerns at the IEP meeting. For example, the Parent stated she wanted a goal about peer interactions and making/keeping friends. The Student's IEP addressed this to a degree with the cooperative work goal, which targeted the skill of working cooperatively with a peer. The Parent also stated the Student's "calm body" goal inappropriately targeted the Student's behavior of rocking, which she stated was a stimming behavior, helps the Student calm down, and is a symptom of autism. However, again, it is not clear whether the Parent raised this specific concern with the IEP team.

Overall, OSPI finds the goals are appropriate as they were developed by the IEP team, with Parent participation, based on the recent reevaluation, FBA, and Student-specific data and needs. While OSPI encourages the IEP team to discuss the Parent's concerns with elements of goals, OSPI finds no violation with respect to the development of the goals.

Development of a behavioral intervention plan (BIP): The Parent expressed concerns that the BIP did not address peer interactions and building health peer relationships.

In developing each student's IEP, the team must consider the use of positive behavioral interventions and supports and other strategies to address the student's behavior. This means that in most cases in which a student's behavior impedes his learning or that of others, and can be readily anticipated to be repetitive, proper development of the student's IEP will include positive behavioral interventions, strategies, and supports. This could include a BIP, which at a minimum, describes: the pattern of behavior(s); the instructional and/or environmental conditions or circumstances that contribute to the pattern of behavior(s) being addressed; the positive behavioral interventions and supports to reduce the pattern of behavior(s) and increases the desired prosocial behaviors and ensure the consistency of the implementation of the positive behavioral interventions; and the skills that will be taught and monitored as alternatives to challenging behavior(s) for a specific pattern of behavior of the student.

Following the completion of the FBA on November 18, 2021, the Student's IEP team began developing a BIP and finalized the BIP at a January 2022 IEP meeting. The BIP targeted the behaviors of not focusing or engaging in planned activities, leaving or refusing to enter the classroom, leaving the instructional setting, and hiding under desks; self-harming behaviors (pulling hair, putting fingers down throat, or other behaviors that cause self-inflicted tissue damage); and whining, swearing, yelling, and other statements attempting to remove or delay tasks. The BIP met all the requirements outlined in the special education regulations. And, while the BIP did not specifically target peer relationships, the Student's IEP did include a goal related to cooperative work, which would address peer interactions to some degree. Overall, while the

BIP did not address every behavior the Parent wanted, the BIP was based on the FBA and Student specific data. If the Parent still wants to focus more on peer relationships, the Parent is encouraged to raise this as an agenda item at the Student's next IEP meeting. OSPI finds no violation with respect to the development of the BIP.

Least Restrictive Environment (LRE): The Parent alleged the District failed to place the Student in his LRE. The Parent also expressed concern with how long it took to increase the Student's time in the general education setting, stating that it took six IEP meetings before the team agreed to increase the Student's time in general education.

School districts shall ensure that the provision of services to each student eligible for special education shall be provided to the maximum extent appropriate in the general education environment with students who are nondisabled; and in a special education setting only if the nature or severity of the disability is such that education in general education classes with the use of supplementary aids and services cannot be achieved satisfactorily. A student's IEP team has the responsibility to determine the student's LRE and educational placement decisions must be determined annually. The IEP team must consider the following factors when making the determination: the educational benefits to the student of a placement in a general education classroom; the nonacademic benefits of interaction with students who are not disabled; the effect of the student's presence on the teacher and other students in the classroom; and the cost of mainstreaming the student in a general education classroom. A student should not be removed from his or her age-appropriate general education classroom solely because of needed modifications in the general education curriculum.

Here, the Parent wanted the Student to increase the amount of time spent in the general education setting from 34.8% in the Student's February 2021 IEP, which was in place at the start of the school year. Initially, the IEP team agreed to increasing the Student's time in general education, collecting data on the Student's behavior and support needs. The District modified the Student's schedule and began collecting data, which the Parent requested cease around September 21, 2021, as the Student had begun self-harming. The District's data also indicated the Student was unsuccessful on many of the days of the trial in the general education setting. Subsequently, the team determined conducting an FBA was necessary, which was completed on November 18, 2021, and the Student's IEP team began developing a BIP. The Parent continued to ask that the Student be able to access increased time in the general education setting.

At the November 18, 2021 meeting, the IEP team discussed beginning to transition the Student from the special education room to a resource room model and that the Student would start accessing some services in the resource room daily. The team agreed to a gradual increase of time in the general education setting, with the Parent disagreeing as she wanted a faster track. The Parent noted the Student, in previous school years, had spent 49% of his time in the general education setting with BCBA support. As of November 18, 2021, the Student was in the general education setting for recess, lunch, PE, music, media, library, counseling, and math instruction. The IEP noted the Student would continue to receive math instruction in the general education classroom and additionally in the ILC classroom, and that the team agreed the Student would get

support from resource room staff to “try and transition [Student] from the current placement of the ILC classroom, to increase Gen Ed time with support from Resource.” The November 2021 IEP indicated the Student would spend 38.3% of his time in the general education setting. The District stated that at that time, “LRE setting 1 (80-100% regular class) and 2 (40-79% regular class) were considered and rejected due to the following: academic benefit cannot be satisfactorily achieved, non-academic benefit cannot be satisfactorily achieved, and effect student will have on teacher and other students based on the recent evaluation and FBA.”

Discussions about the Student’s placement and LRE continued at the January and February 2022 IEP meetings. At the February 2022 IEP meeting, the team discussed how the Student was doing with increased time in the general education setting and new supports like the 1:1 paraeducator. The team discussed increasing the Student’s time in the resource room further, and that with the increased time in general education since November 2021, the Student was actually in the general education setting around 61% of his time. The team determined it would fully transition the Student to a resource room model by the end of the year and would amend the Student’s IEP at that time as the Student’s minutes continued to gradually change. On May 16, 2022, the Student’s IEP team met to finalize this transition and the IEP was amended to indicate that the Student would spend 69% of his time in the general education setting.

Overall, the process of increasing the Student’s time in general education was gradual and took the majority of the school year. OSPI understands the Parent was frustrated with how long it took, especially given previous years of in-person schooling where the Student spent more time in the general education setting. However, here, the Student’s IEP team discussed and made decisions based on the current data, or determined more data was needed, the team conducted an FBA and developed a BIP, the team added a 1:1 paraeducator to the Student’s IEP, and the team determined it would be beneficial to gradually increase the Student’s time in general education given new supports. The process was Student-centered and focused on meeting the Student’s needs. OSPI finds no violation with respect to the IEP team decision to gradually increase the Student’s time in the general education setting.

1:1 Paraeducator Support: The Parent alleged the District ignored the recommendations for a 1:1 paraeducator and delayed providing the Student 1:1 support.<sup>8</sup>

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<sup>8</sup> The Parent also raised concerns about training for future paraeducators working with the Student and stated her request to include training for future paraeducators in the IEP was denied. The documentation indicated the Student’s current 1:1 paraeducator was a registered behavior technician and had behavior training and experience working with students with autism. The District indicated that it supports the training of paraeducators in the state paraeducator competencies and right response training. For the Student’s 1:1, the paraeducator received training from the case manager, special education team, and BCBA with respect to the IEP and BIP. Overall, the District provided information that it trains paraeducators sufficiently and that the Student’s 1:1 received necessary training. The Parent’s request regarding future paraeducators is somewhat speculative as the future paraeducators have not been hired or assigned; however, OSPI recommends the IEP team discuss in future as necessary.

The Parent began requesting a 1:1 paraeducator starting at the beginning of the 2021–2022 school year. This request was discussed at several IEP meetings and in emails, with the following decisions made:

- September 8, 2021 IEP meeting: The team agreed to collect behavior data and then discuss the request for a 1:1.
- September 30, 2021 IEP meeting: The team determined it would be more appropriate to discuss the Student's placement and supports such as the 1:1 after the FBA was completed.
- Early October 2021: The Parent emailed regarding 1:1 support and the District responded the IEP team would discuss based on the results of the reevaluation and FBA.

On November 18, 2021, at the Student's IEP meeting, the team agreed based on the reevaluation and FBA that the Student required the support of a 1:1 paraeducator and added 1,775 minutes per week of 1:1 support to the Student's IEP. The documentation indicates the District began the process of hiring a 1:1; and ultimately, the specific 1:1 for the Student was hired mid-January 2022. However, the District stated that while a specific person was not hired for the 1:1 position until January 2022, the Student had been receiving some amount of 1:1 support from existing special education staff throughout the school year, especially when he was participating in the general education setting. This statement is supported by information indicating a paraeducator had been supporting the Student and gathering data since the start of the school year.

The District did not add 1:1 paraeducator support to the Student's IEP until November 18, 2021 and did not specifically hire for this position until January 2022. But because the Student was being provided some amount of 1:1 support prior to adding this to the IEP, this indicates that there was a general consensus that the Student required 1:1 support even prior to the FBA being conducted and the BIP being developed. The 1:1 paraeducator support could have been added to the Student's IEP prior to the FBA and BIP being completed, as there appeared to be a documented need for the support. Thus, OSPI finds a violation as the IEP team was providing the Student a support, that data indicated he need, but that was not on the Student's IEP and did not add this service to the IEP until several months into the school year. The District will be required to conduct training related to amending IEPs and best practices for addressing requests for 1:1 support.

Additionally, OSPI determines that compensatory education is an appropriate equitable remedy in this case as the documentation indicates the Student's rate of progress accelerated and challenging behaviors decreased once he had the support from the dedicated 1:1 on his IEP. Further, this documentation indicates that had the Student had a dedicated 1:1 sooner, he may have been able to increase more time in the general education sooner as well. Thus, OSPI finds that compensatory education is warranted, and the District will provide the Student 10 hours of compensatory education.

ABA & BCBA Services: The Parent alleged the District did not allow the Student's private ABA provider to provide services in school and that the District failed to include direct, 1:1 BCBA support as a related service on the Student's IEP.



*ABA Therapy:* There is no requirement that districts allow private providers to provide students with services in school. However, an IEP team should consider whether the services—such as ABA therapy—are necessary to enable a student to receive a FAPE. And if services are necessary, a district must provide those services either through district staff or contacted staff.

Here, it initially seemed as though the school supported having the Student's private providers in the classroom as evidenced by email discussions at the end of August 2021, wherein the District staff stated both that the ABA support would be welcome and that the Student's access to general education may be contingent upon such support: "[Parent] if you would like [Student] to attend lunch and recess with [general education class], ABA will have to be at school supporting, during my classroom's lunch and recess" and "if ABA wanted to support 1-2 full days, [Student] can increase time in [general education] during the times they are able to support."

OSPI notes that despite a district not being required to allow private providers in a classroom, it is problematic that the District communications appeared to condition access to general education on the presence of private providers. If the Student required ABA services to access his education, that is something the Student's IEP team should determine and then the District provide. Once the Parent asked about the private ABA provider, this should have been discussed at an IEP meeting. It does not appear this was discussed by the IEP team at the September 8, 2021 meeting as the prior written notice indicates the Parent asked about the Student receiving 1:1 paraeducator support as the ABA therapist "is not to help provide academic services or supports while in the school setting." Despite not specifically discussing whether the Student required ABA therapy to receive FAPE, the next steps likely would have been the same—gather behavior data and conduct an FBA, which as discussed above, occurred.

OSPI finds that the District did not initially properly respond to the Parent's request regarding the private ABA provider. First, the District improperly stated the Student's participation in the general education setting was conditioned on the presence of the private provider. And while this did not actually occur, in other words, the Student began accessing more general education despite no ABA provider; the District's statements were contrary to the IDEA. Second, the IEP team did not clearly discuss the request for the private provider in the first IEP meeting, and if the private provider was not approved, discuss whether the services provided by the private provider were necessary for the Student to receive FAPE and thus a service the District should provide. Instead, the IEP team shifted its focus to whether a 1:1 was needed, and as discussed above, delayed amending the IEP to include this support until the FBA was completed. While the focus on conducting an FBA was not necessarily wrong, the IEP team did not clearly address the Parent's request for ABA services in a timely manner. Thus, OSPI finds a violation and the District will be required to provide training on addressing parent requests around private providers.

*BCBA Services:* The Parent continued to request the Student receive ABA therapy, specifically noting in emails that the Student's doctor had stated ABA therapy in school was "medically necessary." The District stated that the requests would be discussed following the completion of the reevaluation and FBA and that, if necessary, the IEP team would determine whether services would be provided by District staff or a contracted provider. Ultimately, the IEP team determined

that support from a BCBA was needed and on November 18, 2021, the IEP team added a consultation with a BCBA for three hours per week as a support for school personnel to support implementation of the IEP and BIP. The Parent disagreed with this decision as she wanted the Student to receive direct service minutes from the BCBA as a related service. In December 2021 and January 2022, the Parent continued to email and ask whether the Student's private ABA therapist could provide services in school and requested that the BCBA services be a related service. The IEP team did not agree to change this and the BCBA services remained listed as a consultation.

While the IEP team should work toward consensus, the District has ultimate responsibility to ensure that the IEP includes the services that the student needs to receive FAPE. Here, the Parent disagreed. But disagreement with a decision does not necessarily mean the IEP was improperly developed. In this case, the documentation supports that the IEP team based its decision on Student specific data, the FBA, and the team made an appropriate decision. OSPI finds no violation.

OSPI notes the Parent emphasized how well the Student has done during summer services with 1:1 support from the BCBA. This does not necessarily mean the IEP, when it was developed during the 2021–2022 school year, was developed incorrectly with respect the BCBA services. However, OSPI encourages the District to consider data from the summer and how that may impact future services at the next IEP meeting.

Concerns About Progress and Regression: The Parent alleged the District failed to address concerns about the Student's progress and potential regression, particularly in behavior.

A student's IEP must be reviewed and revised periodically, but not less than annually, to address: any lack of expected progress toward annual goals or in the general education curriculum; the results of any reevaluations; information about the student provided to, or by, the parents; the student's anticipated needs; or any other matters.

Here, the documentation indicates the District continually addressed the Parent's concerns, even if the Parent did not agree with all the decisions. The Student's IEP met multiple times throughout the year in response to Parent requests, to develop the annual IEP, and to amend the IEP. The District conducted an early reevaluation, an FBA, and developed a BIP. The documentation shows the IEP team began to gradually increase the Student's IEP and adjusted programming and supports for the Student, including adding supports like the 1:1 paraeducator. The information reviewed in the complaint also indicated the Student's behavior began to improve following the implementation of the BIP and 1:1 paraeducator. Overall, OSPI finds that while this was an ongoing process throughout the year, the Student's IEP team worked to address the Student's needs and the Parents concerns all through the 2021–2022 school year. OSPI finds no violation.

**Issue Three: Extended School Year (ESY) Services** – The Parent alleged the District failed to provide the Student with ESY services and failed to provide a prior written notice documenting the decision.

ESY services are services provided to a student eligible for special education that are beyond the normal school year, in accordance with the student's IEP, and at no cost to the parents of the student. ESY services must be provided only if the student's IEP team determines, based on the student's needs, that they are necessary for the student to receive a FAPE. The purpose of ESY services is the maintenance of the student's learning skills or behavior, not the teaching of new skills or behaviors. School districts must develop criteria for determining the need for ESY services that include regression and recoupment time based on documented evidence, or on the determinations of the IEP team, based on their professional judgment and considering the nature and severity of the student's disability, rate of progress, and emerging skills, among other things, with evidence to support the need.

The Student's November 2021 and May 2022 IEPs noted the Student was not eligible for ESY. There is no indication the IEP team specifically discussed ESY at either IEP meeting. In email communications on March 10, March 21, and May 12, 2022, the Parent indicated she was interested in summer services, asking for "suggestions on skills to focus on over the summer months to try and close the gap" and indicated she wanted the Student to attend ESY with a BCBA to "maintain [Student's] BIP." On May 26, 2022, the Parent emailed the principal and asked whether ESY for the Student would include a 1:1 paraeducator, BCBA oversight, and continued implementation of the Student's BIP.

On June 17, 2022, the Student's IEP team met. The prior written notice indicated that the team determined the Student would attend the District's summer school program for recovery services. But the notice indicated the team determined the Student did not require ESY and that ESY for the following year would "be discussed and considered at the fall IEP review meeting based upon data collected with the summer recovery services as compared to previous summer and fall data." The Parent, in an email to the District and in her reply, stated that the team did not discuss ESY at the meeting and that they did not discuss tabling the discussion of ESY until the fall. The Parent stated that the team discussed recovery services in the form of summer school.

It is not clear how detailed the discussion of ESY was at the IEP meeting. While the prior written notice indicated that ESY was discussed, the Parent stated it was not. Further, despite the statement in the prior written notice, there is no detail about why the Student would not qualify for ESY, the criteria used, or whether the Student's progress and potential regression was discussed. Given that the Parent had specifically requested several times to discuss ESY, OSPI finds that the IEP team did not adequately discuss ESY and did not adequately document why the Student did not need ESY. OSPI finds a violation. The Student's IEP team will be required to meet to discuss data from summer 2022 and create a plan for data collection for ESY decisions during the 2022–2023 school year.

**Issue Four: Recovery Services** – The Parent alleged the District failed to consider recovery or compensatory services to address the Student's lack of progress and regression despite the Parent making multiple requests.

Recovery services are intended to mitigate the impact of COVID-19 school facility closures in spring 2020 and COVID-19 pandemic generally. Recovery services should enable the student to make progress on IEP goals and be used if students have not been provided or were unable to access IEP services during the COVID-19 pandemic. Recovery services should be determined by IEP teams on a case-by-case basis. Districts should examine the effect of COVID-19 and the special education and related services provided during school building closures and during the 2020–2021 school year on the student’s overall progress and engagement, including progress toward their IEP goals.

In March 2022, the Parent began asking the director if they could discuss compensatory education to address the Parent’s concerns about the Student regressing, having repetitive IEP goals, not mastering IEP goals, and failing to make progress. The documentation indicates that this discussion became intertwined with discussions of recovery services and summer programming. On March 21 and May 12, 2022, the Parent submitted what she was requesting for compensatory and recovery services, including:

- “1:1 High Quality Tutor”
- “School Paid for social skills opportunities with BCBA and or BT/ Behavior trained 1:1 Para i.e. After School Program.”
- “BCBA direct service minutes.”
- “Behavior training...for any 1:1 Para-professional, who assists [Student].”
- “Providing weekly BIP data to parents.”
- “Responding to reasonable requests in 10 business days.”

On May 25, 2022, the principal emailed the Parent that he met with the director and assistant director and proposed summer school as part of the recovery services for the Student. The Parent responded on May 26, 2022 and asked how the summer program “being offered to anyone interested” would address the Student’s specific needs. In her reply to the District’s response, the Parent stated she was concerned that because summer school was offered to anyone that wanted to attend, it would not be individualized like compensatory education or ESY would be. On June 17, 2022, the Student’s IEP team proposed that the Student attend the District’s summer program for recovery services in behavior and writing, and that the District BCBA would attend the summer school/recovery services as the Student’s 1:1 to ensure the BIP and goals were implemented.

The District noted that the Student attended recovery services during summer school 2022 to support progress toward writing and behavior goals in the IEP and BIP. The BCBA acted as the Student’s 1:1 during summer services and monitored the implementation of the Student’s IEP and BIP. In her reply to the District’s response, the Parent stated that during summer school with 1:1 support from the BCBA, the Student had “100% behavior free days with only 1 emotional day the entire time & was working toward making friends.”

As discussed, the Student’s IEP team met throughout the school year to address the Student’s needs and the Parent’s concerns. In response to the Parent’s request regarding summer services, the Student’s IEP team determined that the Student required recovery services and would attend the summer school programming as part of recovery services. OSPI notes that recovery services should be determined by IEP teams on a case-by-case basis; however, there is no prohibition

against using existing programs like summer school as a means of providing recovery services. The Parent objected because she did not think the summer school was individualized but based on the documentation, the team did consider the Student's individual needs as he would focus on behavior and writing in summer school and would continue to receive 1:1 support to ensure his BIP and goals were implemented. OSPI finds the District properly assessed the Student's need for recovery services and provided those services. OSPI finds no violation.

### **CORRECTIVE ACTIONS**

By or before **September 30, 2022, October 3, 2022, October 21, 2022, December 9, 2022, and January 6, 2023**, the District will provide documentation to OSPI that it has completed the following corrective actions.

#### **STUDENT SPECIFIC:**

##### **Compensatory Education**

By or before **September 30, 2022**, the District and Parent will develop a schedule for 10 hours of compensatory education. The Parent and District can decide which of the Student's service areas the compensatory education should focus on.

Unless otherwise agreed to by the District and Parent, services will be provided by a certified special education teacher. Services may be provided in a 1:1 setting or a group setting, if appropriate. Services will be provided outside the District's school day and can be schedule on weekends, over District breaks, or before or after school. The District will provide OSPI with documentation of the schedule for services by or before **October 3, 2022**.

If the District's provider is unable to attend a scheduled session, the session must be rescheduled. If the Student is absent, or otherwise does not attend a session without providing the District or provider with at least 24 hours' notice of the absence, the session does not need to be rescheduled. The services must be completed no later than **December 30, 2022**.

By or before **January 6, 2023**, the District must provide OSPI with documentation that it has completed compensatory services for the Student.

The District either must provide the transportation necessary for the Student to access these services or reimburse the Parent for the cost of providing transportation for these services. If the District reimburses the Parent for transportation, the District must provide reimbursement for round trip mileage at the District's privately-owned vehicle rate. The District must provide OSPI with documentation of compliance with this requirement by **January 6, 2023**.

##### **IEP Meeting**

By or before **October 14, 2022**, the Student's IEP team will meet to discuss the Student's needs regarding ESY services, including reviewing data from summer 2022; and discuss a plan to collect data for ESY decisions during the 2022–2023 school year.

OSPI also recommends the IEP team discuss any concerns the Parent has with elements of the Student's IEP goals and BIP.

By or before **October 21, 2022**, the District will provide OSPI with the following documentation: a) any relevant meeting invitations, b) a prior written notice, summarizing the IEP team's discussion and decisions; c) the plan for recovery services if determined appropriate; and d) any other relevant documentation.

## **DISTRICT SPECIFIC:**

### **Training**

The District will develop and conduct a training on the below topics. OSPI encourages the District to work with the ESD or other technical assistance consultant to develop the training. The following District staff will receive training: District special education administrators; and the following at the Student's school: principal, assistant principal, and special education certified staff (teachers). The training will cover the following topics:

- IEP amendment requirements, including:
  - When to amend IEPs;
  - Whether IEPs should be amended if a special education support is already being provided; and,
  - Best practices for addressing requests for 1:1 paraeducator support.
- Addressing parent requests for private provider services in the classroom, including:
  - Any District policies related to private providers; and,
  - Whether an IEP team meeting is required to determine whether a student needs a service based on the parent's private provider request and whether that service should be provided by the District.

The training will include examples.

By or before **September 30, 2022**, the District will notify OSPI of the name of the trainer and provide documentation that the District has provided the trainer with a copy of this decision for use in preparing the training materials.

By or before **October 21, 2022**, the District will submit a draft of the training materials for OSPI to review. OSPI will approve the materials or provide comments by November 4, 2022.

By **December 2, 2022**, the District will conduct the training regarding the topics raised in this complaint decision.

By **December 9, 2022**, the District will submit documentation that required staff participated in the training. This will include 1) a sign-in sheet from the training, and 2) a separate official human resources roster of all staff required to attend the training, so OSPI can verify that all required staff participated in the training.

The District will submit a completed copy of the Corrective Action Plan (CAP) Matrix, documenting the specific actions it has taken to address the violations and will attach any other supporting documents or required

Dated this \_\_\_\_ day of September, 2022

Dr. Tania May  
Assistant Superintendent of Special Education  
PO BOX 47200  
Olympia, WA 98504-7200

**THIS WRITTEN DECISION CONCLUDES OSPI'S INVESTIGATION OF THIS COMPLAINT**

IDEA provides mechanisms for resolution of disputes affecting the rights of special education students. This decision may not be appealed. However, parents (or adult students) and school districts may raise any matter addressed in this decision that pertains to the identification, evaluation, placement, or provision of FAPE to a student in a due process hearing. Decisions issued in due process hearings may be appealed. Statutes of limitations apply to due process hearings. Parties should consult legal counsel for more information about filing a due process hearing. Parents (or adult students) and districts may also use the mediation process to resolve disputes. The state regulations addressing mediation and due process hearings are found at WAC 392-172A-05060 through 05075 (mediation) and WAC 392-172A-05080 through 05125 (due process hearings.)